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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,951	01/17/2002	John R. Hind	RSW920010122US1	1746

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 09/06/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/051,951

Applicant(s)

HIND ET AL.

Examiner

Jacob F. B  tit

Art Unit

2164

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 June 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.



**SAM RIMELL
PRIMARY EXAMINER**

Continuation of 10. Other (including any explanation in support of the above items):

According to 37 CFR §41.31(c), "An appeal, when taken, must be taken from the rejection of all the claims under rejection which the applicant or owner proposes to contest." Since the newly added claims 94-99 are not currently under rejection, there is no rejection on these claims for the applicant to appeal.

Further, according to 37 CFR 41.33 (b) Amendments filed on or after the date of filing a brief pursuant to §41.37 may be admitted: (1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or (2) To rewrite dependent claims into independent form. The applicant's amendment does not constitute an acceptable amendment under this rule.

Further even if the amendment were being filed for consideration by the examiner instead of being appealed to the Board of Appeals and Interferences, it would be improper to enter the amendment because it is not in compliance with 37 CFR §1.121(c). Claims 56 and 57 are not amended from the previous version. In the listing of claims these claims are labeled as "Currently Amended" and have markings to indicate an amendment is being made. These amendments were already made in the amendment dated 14 June 2006. Claims 56 and 57 should be indicated as "Previously Presented", and the markings to show changes should be removed.

For the reasons stated above the appeal brief is non-compliant. In response to this notice, the applicant is advised to: 1) Appeal the rejection of the claims set forth in the Non-Final rejection dated 17 August 2006 by filing an appeal brief that properly addresses these claims; or 2) File a Request for Continued Examination, with fee, including an amendment that corrects the errors to the non-entered amendment, pointed out above.

It is noted that "[t]he appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified. See MPEP 1205.03

This notice was written after consultation with two of the technology center SPREs.